IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O. O. C. J.

SUMMONS FOR JUDGMENT NO.832 OF 2004

IN

SUMMARY SUIT NO.2049 OF 2004

Arvind Chandulal Patel. ...Plaintiff.

Versus

Jagdamba Sahakari Sakhar Karkhana Ltd. ...Defendant.

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Mr. Ghulam Rasool Khan for the Plaintiff.
None for the Defendant.

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CORAM : DR. D.Y. CHANDRACHUD, J.

June 19, 2007.

P.C.:

The Plaintiff sold, supplied and delivered goods to the Defendant on 15th February 2001. The Defendant, in pursuance of a communication of the Plaintiff, confirmed the balance due and outstanding as on 31st March 2002, in the amount of Rs.6,74,303/-. The suit has been instituted thereafter on 22nd June 2004 within the period of limitation.

In the recent judgment of the Full Bench in Jyotsna **K. Valia**

vs. M/s.T. S. Parekh & Co., Summons for Judgment 1117 of 2003 in Summary Suit 1551 of 2003 and companion matters, it has been held thus:

> "In so far as the settled account is concerned, it is no doubt true as noticed by the learned Single Judge, that the various judgments adverted to, for holding that the summary suit would lie on a settled account, either of the Privy Council or of the Supreme Court did not arise from suits filed as summary suits. However, after the judgment of the Privy Council (Clvira L. Rodrigues) Sequeira (supra) which has been considered by the Supreme Court in Harilal & Ors. (supra), a summary suit on a settled account, duly confirmed by the Defendant is maintainable as it is an acknowledgment by the Defendant in the ledger in which mutual accounts have been entered and the accounts settled between them. Such settling of accounts gives rise to a written contract on a fresh cause of action, with an implied promise to pay the amount settled. A summary suit would therefore, lie on settled accounts duly confirmed by the defendants. Issue (i) is answered accordingly."

Counsel appearing on behalf of the Plaintiff has tendered a compilation of the original documents. A writ of summons was served on the Defendant and the Defendant has entered appearance. However, no reply has been filed to the Summons for Judgment. The claim of the Plaintiff has been duly proved on the basis of the documentary evidence on the record and the liability of the Plaintiff

has been acknowledged by the Defendant. Even otherwise, the Defendant having failed to reply to the Summons for Judgment, the Plaintiff will be entitled to a decree. The claim of the Plaintiff falls within the purview of Order 37 of the Code of Civil Procedure, 1908. The suit shall accordingly stand decreed as prayed with the modification that the Plaintiff will be entitled to interest at the rate of 9% per annum on the principal sum of Rs.6,74,303/- from the due dates of the bill until the date of the institution of the suit and at the same rate from the date of the institution of the suit until payment or realisation.

The Summons for Judgment is accordingly made absolute.

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